



# Virginia Consumer Data Protection Act

Approved by the General Assembly 2021

# Overview of VCDPA

- ◆ HB 2307 & SB 1392
- ◆ 10 sections
- ◆ Definitions
- ◆ Scope
- ◆ Personal Data Rights
- ◆ Data Controller Responsibilities
- ◆ Responsibility According to Role
- ◆ Data Protection Assessments
- ◆ Limitations
- ◆ Investigative Authority
- ◆ Enforcement
- ◆ Consumer Privacy Fund

# Industry Specific privacy laws

- ◇ HIPAA, 1996 (medical data)
- ◇ Gramm-Leach-Bliley, 1999 (financial data)
- ◇ COPPA, 2000 (children's data)
- ◇ Fair Credit Reporting Act, 1970 (credit data)
- ◇ Family Educational Rights and Privacy Act, 1974 (student data)

# VCDPA Definitions & Scope

- ◆ Defines terms such as:
  - ◆ Controller
  - ◆ Processor
  - ◆ De-identified data
  - ◆ Biometric data
  - ◆ Personal Data
  - ◆ Targeted Advertising
  - ◆ Child
- ◆ Applies to businesses that operate in VA and
  - ◆ Control or process the data of at least 100,000 consumers or
  - ◆ Control or process the data of at least 25,000 consumers and derive more than 50% of revenue from the sale of personal data
- ◆ Exemptions
  - ◆ Body, board, authority, agency of the Commonwealth
  - ◆ Non-profits
  - ◆ Sensitive Data covered by Federal regulations
    - ◆ HIPAA
    - ◆ Graham-Leach-Bliley Act



# VCDPA Personal Data Rights

A controller shall comply with an authenticated consumer request to exercise the right:

1. To confirm whether or not a controller is processing the consumer's personal data and to access such personal data;
2. To correct inaccuracies in the consumer's personal data, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data;
3. To delete personal data provided by or obtained about the consumer;
4. To obtain a copy of the consumer's personal data that the consumer previously provided to the controller in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another controller without hindrance, where the processing is carried out by automated means; and
5. To opt out of the processing of the personal data for purposes of (i) targeted advertising, (ii) the sale of personal data, or (iii) profiling in furtherance of decisions that produce legal or similarly significant effects concerning the consumer



# VCDPA Data Controller Responsibilities & Assessments

- ◆ Data Controller
  - ◆ Must limit data collection to what is reasonable, adequate, and necessary
- ◆ Controllers & Processors must enter into contracts outlining responsibilities
- ◆ Sensitive Data, such as that collected from children, requires greater protection
  - ◆ Child is 13 years or younger as used in GDPR
- ◆ Routine assessments required following:
  - ◆ The processing of personal data for targeted advertising
  - ◆ The sale of personal data
  - ◆ The processing of personal data for purposes of profiling
  - ◆ The processing of sensitive data
  - ◆ Processing activities involving personal data that present a heightened risk of harm to consumers.



# VCDPA Limitations

- ❖ The VCDPA does not limit data controller's and processor's ability to:
  - ❖ Comply with investigations
  - ❖ Adhere to applicable state, and federal laws
  - ❖ Prevent or respond to security incidents
  - ❖ Comply with discovery requests
- ❖ The VCDPA does not restrict a controller's or processor's ability to collect, use, or retain data to:
  1. Conduct internal research to develop, improve, or repair products, services, or technology;
  2. Effectuate a product recall;
  3. Identify and repair technical errors that impair existing or intended functionality; or
  4. Perform internal operations that are reasonably aligned with the expectations of the consumer



# VCDPA Investigative Authority & Enforcement

- ◆ The Attorney General has exclusive authority over enforcement
- ◆ Each violation carries a maximum civil penalty of \$7,500
- ◆ Controllers and Processors are afforded a thirty day period to cure alleged violations
- ◆ All proceeds recovered shall revert to the Consumer Privacy Fund in the State Treasury





# Implementation

- ◆ 2. The Chairman of the Joint Commission on Technology and Science shall create a work group composed of the Secretary of Commerce and Trade, the Secretary of Administration, the Attorney General, the Chairman of the Senate Committee on Transportation, representatives of businesses who control or process personal data of at least 100,000 persons, and consumer rights advocates. The work group shall review the provisions of this act and issues related to its implementation. The Chairman of the Joint Commission on Technology and Science shall submit the work group's findings, best practices, and recommendations regarding the implementation of this act to the Chairmen of the Senate Committee on General Laws and Technology and the House Committee on Communications, Technology and Innovation no later than November 1, 2021.

## Effective Date

- ◆4. That the provisions of the first and third enactments of this act shall become effective on January 1, 2023

# Tentative Future Meetings

- ◆ July 12, 2021 at 2:00 p.m.
- ◆ August 17, 2021 at 2:00 p.m.
- ◆ September 13, 2021 at 2:00 p.m.
- ◆ October 13, 2021 at 2:00 p.m.